

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:

ISMAEL ESCOBEDO,

Complainant,

and

GENERAL MANUFACTURING CORP.
a/k/a GRIND-RITE GRINDING & MFG., CO.,

Respondent.

CHARGE NO(S): 2008CF2591
EEOC NO(S): 21BA81471
ALS NO(S): 09-0408

NOTICE

You are hereby notified that the Illinois Human Rights Commission has not received timely exceptions to the Recommended Order and Decision in the above named case. Accordingly, pursuant to Section 8A-103(A) and/or 8b-103(A) of the Illinois Human Rights Act and Section 5300.910 of the Commission's Procedural Rules, that Recommended Order and Decision has now become the Order and Decision of the Commission.

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

Entered this 23rd day of August 2010

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:

**ISMAEL ESCOBEDO,
Complainant,**

and

**GENERAL MANUFACTURING CORP.
A/K/A GRIND-RITE GRINDING
& MFG., CO.,
Respondent.**

)
)
)
) **Charge No: 2008CF2591**
) **EEOC No: 21BA81471**
) **ALS No: 09-0408**
)
)
)
)
)
)

RECOMMENDED ORDER AND DECISION

This matter is before me following the entry of a default order by the Illinois Human Rights Commission (Commission) on August 12, 2009. A public hearing to determine the amount of damages was held on March 10, 2010. *Pro se* Complainant appeared and offered testimony on the issue of damages. Respondent did not appear and did not take part in the public hearing.

The Illinois Department of Human Rights is an additional statutory agency that has issued state actions in this matter; therefore, it is named herein as an additional party of record.

CONTENTIONS OF THE PARTIES

In the underlying *Charge of Discrimination* (Charge), filed with the Illinois Department of Human Rights (Department) on February 26, 2008, Complainant alleges that Respondent subjected him to discrimination based on his national origin when he was discharged from his position as CNC Machine Operator on December 21, 2007. Pursuant to the default order, Respondent admits the allegations of national origin discrimination in the Charge.

FINDINGS OF FACT

The following findings of fact are based on the record in this case:

1. Complainant's national origin is Mexico.
2. Respondent hired Complainant as a CNC Machine Operator in February, 2007.
3. Complainant's work performance met Respondent's expectations.
4. On December 21, 2007, Respondent discharged Complainant.
5. Respondent's proffered reason for discharging Complainant was that Complainant was responsible for manufacturing defective parts, which resulted in a \$75,000.00 loss to the company.
6. Complainant did not manufacture the defective parts. Another employee named Mike, Caucasian, was the employee who actually manufactured the defective parts and he was not discharged.
7. At the time he was discharged, Complainant worked full time and made \$12.00 per hour. Complainant remained unemployed from December 21, 2007 until April, 2008, when he began working full time for Accuttech Machine Company as a CNC Operator for \$11.00 per hour. Complainant received a raise to \$12.00 per hour in September, 2009. Complainant is still employed by Accuttech Machine Company.
8. Complainant is entitled to reinstatement to his former job, back wages, and emotional distress damages to make him whole.

CONCLUSIONS OF LAW

1. Complainant is an "employee" and Respondent is an "employer" as those terms are defined under the Illinois Human Rights Act, (Act), 775 ILCS 5/1-101 *et seq.*
2. The Commission has jurisdiction over the parties and subject matter of this action.
3. Pursuant to the default order, Respondent admits the allegations of national origin discrimination in the Charge. Section 5/7A-102(B) of the Act.

DETERMINATION

Respondent was held in default on the issue of liability pursuant to the Order of Default issued August 12, 2009. Complainant is entitled to reinstatement to his former job, back pay in the amount of \$7,600.000 and emotional distress damages in the amount of \$5000.00.

DISCUSSION

The Commission issued an Order of Default against Respondent on August 12, 2009 and ordered that a public hearing on the issue of damages be held. Pursuant to the default order, Respondent admits the allegations of national origin discrimination in the Charge, filed February 26, 2008. *Karla Payne and Roseland Christian Health Ministries, Inc.*, IHRC, ALS No. 11591, January 27, 2003.

Complainant's national origin is Mexico. Respondent hired Complainant as a CNC Machine Operator in February, 2007. Complainant's work performance met Respondent's expectations. On December 21, 2007, Respondent discharged Complainant. Respondent's proffered reason for discharging Complainant was that Complainant was responsible for manufacturing defective parts, which resulted in a \$75,000.00 loss to the company. Complainant did not manufacture the defective parts. Another employee named Mike, Caucasian, was the employee who actually manufactured the defective parts and Mike was not discharged.

DAMAGES

When a violation of the Act has occurred, the complainant should be placed in the position in which he would have been but for the discrimination. *Clark v. Illinois Human Rights Commission*, 141 Ill App 3d 178, (1st Dist 1986). The purpose of a damage award is to make the complainant whole.

Reinstatement

As a civil rights violation was found, Complainant is presumptively entitled to reinstatement. *Loyola University v Human Rights Commission*, 149 Ill. App.3d 8, 500 N.E.2d 639, (1st Dist 1986). Complainant requests reinstatement to his position as CNC Operator and testified that he is willing and able to return to his position. The record presents no reason why Complainant should not be reinstated. Complainant is entitled to reinstatement to his position.

Back pay

Complainant is also presumptively entitled to back pay. *Loyola University v Human Rights Commission*, *supra*. In calculating the amount of back pay damages, Complainant is to be placed in the position in which he would have been but for the discriminatory act. *Clark v Human Rights Commission*, *supra*.

Complainant requests back pay for the time period December 22, 2007 until September 1, 2009. Complainant credibly testified that at the time of his discharge, he worked full time for Respondent and made \$12.00 per hour. Complainant remained unemployed from December 22, 2007 until April, 1, 2008, when he began working full time as a CNC Operator for Accuttech Machine Company. Complainant's starting pay at Accuttech was \$11.00 per hour. Complainant began making \$12.00 per hour in September, 2009. Complainant is still employed by Accuttech Machine Company.

Complainant is entitled to the following back pay award:

2007 - One week of pay at \$12.00 per hour x 40 hours per week = \$480.00

2008 - Thirteen weeks of pay from January 1, until March 30, at \$480.00 per week= \$6,240.00

Twenty-two weeks of pay from April 1, until August 31, at \$40 a week= \$880.00

Complainant is entitled to back pay in the amount of \$7,600.00.

Emotional Distress

Complainant requests compensation for emotional distress suffered as a result of the discriminatory act. In deciding whether an award of emotional damages is appropriate, it cannot be assumed that emotional damages are appropriate merely because a civil rights violation occurred. Rather, the decision to award such emotional damages depends upon the facts and circumstances of each case. See, *Lowe v. National Sheet Metal of Illinois*, IHRC, ALS No. 5466(S), Oct. 30, 1995. The measure of emotional distress damages is based upon the nature and duration of suffering experienced by the Complainant. The amount should be sufficient to ease one's feelings regarding the civil rights violation. *Smith v. Cook County Sheriff's Office*, IHRC, ALS No. 1077 (RRP), Oct. 31, 1985.

Under these circumstances, I find that an award of emotional damages is appropriate. Complainant testified that, as a result of the discriminatory act, he felt bad because he believed himself to be a hard worker and this was the first time such discrimination had happened to him. Complainant said that he is an unmarried father of two children who live with him and that he is responsible for supporting them. He said that he felt bad because it was difficult to pay his rent and to feed his children and that he could not provide his children with the things they needed for school. Complainant said that he also felt bad that he was unable to pay for his children to go camping or to go out of town. Further, Complainant said that he lost his car because he could no longer afford to pay for it, which forced him to ride the bus or to walk to his new job.

In *Lowe v. National Sheet Metal of Illinois*, *supra*, a default case where the complainant was illegally terminated due to his physical handicap, the Commission awarded \$5000.00 in emotional distress damages. The complainant in *Lowe* suffered

mental distress when he was forced to sell his home and return his car because he could no longer afford the monthly payments. Also, the complainant felt ashamed because he was forced to receive public aid support while he searched for employment, which took him six months to find.

Complainant's testimony of his emotional distress experienced here is similar to that of the complainant in *Lowe*; therefore, I find \$5,000.00 a reasonable amount to compensate Complainant for his emotional distress.

RECOMMENDATION

Accordingly, it is recommended that the Complaint in this matter be sustained on the national origin discrimination claim and that Complainant be awarded the following relief:

- A. That Respondent reinstate Complainant to employment within 30 days after a final order of the Commission incorporating this recommendation becomes effective. Reinstatement shall be at a rate of pay commensurate with that which Complainant would now be paid if the illegal discrimination had not occurred, with all seniority and other benefits in his favor to be fully restored to Complainant;
- B. That Respondent pay Complainant back pay damages in the amount of \$7,600.00;
- C. That Respondent pay Complainant prejudgment interest on the amount in B to be calculated as set forth at 56 Ill.Admin.Code, Section 5300.1145;
- D. That Respondent pay Complainant emotional distress damages in the amount of \$5,000.00;
- E. That Respondent cease and desist from discriminating on the basis of national origin;
- F. That Respondent purge Complainant's personnel file or any other file kept by Respondent concerning Complainant of any reference to this discrimination charge and litigation.

HUMAN RIGHTS COMMISSION

ENTERED: March 18, 2010

SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section